

# HOUSE BILL REPORT

## HB 1680

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to limiting the exceptions to the prohibition on mandatory overtime for employees of health care facilities.

**Brief Description:** Limiting the exceptions to the prohibition on mandatory overtime for employees of health care facilities.

**Sponsors:** Representatives Green, Conway, Appleton, Wood, Campbell, Morrell, Hasegawa, Darneille, Crouse, Seaquist, Williams, Cody, Moeller, Priest, Smith, Sullivan, Kenney and Ormsby.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/3/09, 2/13/09 [DPS].

**Brief Summary of Substitute Bill**

- Limits exceptions to the prohibition on mandatory overtime for circumstances relating to prescheduled on-call time and patient care in progress.
- Extends application of the prohibition on mandatory overtime to surgical technologists, radiologic technologists, diagnostic medical sonographers, and cardiovascular technologists and technicians.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler.

**Staff:** Alison Hellberg (786-7152)

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Both federal and state minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over 40 hours per week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception, enacted in 2002, prohibits covered health care facilities from requiring overtime, except in limited circumstances, for registered nurses and licensed practical nurses who are involved in direct patient care and paid an hourly wage. For this prohibition on mandatory overtime, overtime means work in excess of an agreed upon, regularly scheduled shift of not more than 12 hours in a 24-hour period or 80 hours in a 14-day period. A health care facility means a facility that is licensed under specified laws as a hospital, a hospice, a rural health care facility, or a psychiatric hospital.

The prohibition on mandatory overtime does not apply to overtime work that occurs in specific circumstances. Two of these exceptions are for prescheduled on-call time and overtime work that occurs because the work is required to complete a patient care procedure already in progress.

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#### **Summary of Substitute Bill:**

Limitations are added to two of the exceptions to the prohibition on mandatory overtime law. First, prescheduled on-call time is an exception, but may only be used for unanticipated and immediate patient care emergencies and not to fill chronic staff shortages. Health care facilities must document reasonable efforts to obtain staffing to avoid prescheduled on-call time. Second, completing a patient care procedure already in progress is an exception, but the employer may not schedule nonemergency procedures that would require overtime.

In addition to registered nurses and licensed practical nurses, these provisions also apply to:

- surgical technologists;
- radiologic technologists;
- diagnostic medical sonographers who produce ultrasonic recordings of internal organs for use by physicians; and
- cardiovascular technologists and technicians who conduct tests on pulmonary or cardiovascular systems for diagnostic purposes.

#### **Substitute Bill Compared to Original Bill:**

The application of the prohibition on mandatory overtime is extended to diagnostic medical sonographers who produce ultrasonic recordings of internal organs for use by physicians. A grammatical correction is made.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The issues in this bill have been discussed by the House Commerce and Labor Committee many times. The prohibition on mandatory overtime has been helpful and several states have copied language from the original bill passed in 2002. Some of the exceptions have led to problems, however, and hospitals have been taking advantage of the loopholes in the law. Prescheduled on-call time has turned into thinly veiled mandatory overtime. Nurses get called in for nonemergency procedures in order to deal with chronic staff shortages. This bill just tweaks some of the exceptions to close those loopholes.

There is a nursing shortage and nurses are overworked. One of the reasons most cited by those leaving the profession are the working conditions which lead to burn-out and low morale. This is meant to address one of the reasons that it is difficult to keep nurses in the profession.

Excessive work hours contribute to medical mistakes and decreased patient safety. The judgment of health care professionals in highly technical and specialized procedures is compromised when they are exhausted and overworked.

This issue has been raised in bargaining but nothing will change until there is a mandate in law.

(With concerns) There is some concern as to whether the definition of "health care facility" includes home services or home-based hospice programs. It is not clear if the intention of the bill was to include these programs. Small and medium-sized home-based hospice programs do not have the capacity to hire separate staff to cover the extensive on-call needs of their clinical operations. This would especially impact programs in rural areas. The definition of "health care facility" should not include these types of programs.

(Opposed) Hospitals agree that prescheduled on-call time should not be used to get around the prohibition on mandatory overtime and have been involved in negotiations with nurses about dealing with issues related to on-call time. Adding three new professions into the prohibition on mandatory overtime has thrown a wrench into these negotiations. Staffing committees were just put into place in September and that is the appropriate place to resolve these issues. Solutions are needed that meet individual hospital needs.

On-call time is a part of health care and hospitals need to be able to keep using it in an appropriate manner. Hospitals rely on prescheduled on-call time because of lack of qualified surgical technicians. This is especially true in the rural context. Extension of this bill to various kinds of technicians will require hospitals to hire a significant amount of additional staff. This will seriously impact the ability of hospitals to deliver on-time critical care. Hospitals need the flexibility to pull in specialized knowledge when an emergency arises.

There is a major shortfall in the funding of health care. Hospitals need to be fiscally responsible and work to deliver the same level of patient care with limited resources. This bill would constrain the ability of hospitals to come up with solutions to address these issues.

(Information only) The Department of Labor and Industries receives inquiries on this issue, but has not taken any complaints for a few years.

**Persons Testifying:** (In support) Representative Green, prime sponsor; Chris Barton, Liz Lasak, and Barbara Cryderman, Service Employees International Union Local 1199; and Kathy Higgins, Washington State Nurses Association.

(With concerns) Lisa Butler, Washington State Hospice and Palliative Care Organization.

(Opposed) Lisa Thatcher, Craig Wilson, and Patty Cochrell, Washington State Hospital Association.

(Information only) Rich Ervin and Suchi Sharma, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** None.